

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 10-0132

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ROBERT J. COOK, )

Petitioner and Appellant, )

vs. )

DIANA J. McCLAMMY, )

Respondent and Respondent. )

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RESPONDENT' S OPENING BRIEF

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On Appeal from the Montana Eighth Judicial District Court  
Cascade County  
Cause No. ADR-03-380

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APPEARANCES:

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Appearing Pro se  
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Appellant

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## **ISSUES ON APPEAL**

ISSUE 1: DID THE DISTRICT COURT ABUSE IT'S DISCRETION WHEN THE DISTRICT COURT DID NOT MAKE THE CHILD SUPPORT ENFORCEMENT DIVISION A PARTY TO THIS ACTION?

ISSUE 2: DID THE DISTRICT COURT ABUSE IT'S DISCRETION WHEN THE COURT DID NOT MAKE ANY FINDINGS OF FACT OR CONCLUSIONS OF LAW ON ISSUES THAT WERE PRESENTED?

ISSUE 3: DID THE DISTRICT COURT ABUSE IT'S DISCRETION WHEN THE DISTRICT COURT MISAPPLIED THE FACTS AND THE HOLDING IN THIS COURT'S DECISIONS IN COOK V. MCCLAMMY, 2009 MT 115 AND COOK V. STATE, CSED, 2009 MT 237N?

## **ISSUE PRESENTED**

ISSUE 1: DID THE DISTRICT COURT ERROR WHEN THE COURT DENIED ROBERT'S MOTION FOR CSED TO VACATE ANY ORDERS, CEASE COLLECTIONS AND RETURN SEIZED FUNDS AND COOK'S SUPPLEMENTAL MOTION, QUASHED AND TO QUASH THE SUMMONS ISSUED ON AUGUST 24, 2009 AND DENIED ROBERT'S MOTION FOR ATTORNEY GENERAL AND LONNIE OLSON TO PAY FOR COSTS OF PERSONAL SERVICE?

## **STANDARD OF REVIEW**

The Court must determine whether “the district court acted arbitrarily without employment of conscientious judgment or exceeded the bounds of reason resulting in substantial justice,” when deciding whether a district court abused its discretion. (citing In re Marriage of Kovarik, 1998 MT 33, ¶21, 287 Mont. 350, ¶21, 954 P.2d 1147, ¶ 21). “This court gives great deference to the trial court’s

judgment, presuming its decision to be correct.” In re the Marriage of Carlson (1984), 214 Mont. 209, 214, 693 P.2d 496, 499.

To determine whether a district courts finding of fact are clearly erroneous, this Court must review those findings of fact. Albrecht v. Albrecht, 2002 MT 227, ¶ 8, 311 Mont. 412, ¶ 8, 56 P.3d 339, ¶ 8 (citing In re Marriage of Stufft, 286 Mont. 239, 250-51, 950 P. 2d 1373, 1379 (1997)). To accomplish this, the Court must determine the following:

- 1) whether the findings are supported by substantial evidence;
- 2) whether the district court misapprehended the effect of the evidence;  
and
- 3) whether “review of the record leaves the court with the definite and firm conviction that a mistake has been committed.” Id. (citations omitted).

## **STATEMENT OF THE CASE**

### **A. Nature of the Case and Disposition in District Court**

The Appellant in this case, Robert J. Cook, (hereinafter “Robert”), argues that the district court erred when the Court did not make the Child Support Enforcement Division, ( hereinafter “CSED”), a party to this action, denied Robert’s motion for CSED to vacate any Orders, Cease Collections and Return

Seized Funds, Quashed the Summons issued on August 24, 2009, and denied his motion for Attorney General and Lonnie Olson to pay for costs of personal service. The Respondent in this case, Diana McClammy, (hereinafter “Diana”) contends that the District Court did not error when the Court issued its Order in this case.

Robert filed a motion for CSED to vacate any orders, cease collections and return seized funds dated August 11, 2009, and a supplemental motion dated August 24, 2009. Motion for CSED to Vacate Orders, Cease Collections and Return Seized Funds, dated August 11, 2009, and Petitioner’s Supplemental Motion dated August 24, 2009. Sharon M. Anderson, Special Assistant Attorney General for the State of Montana, Department of Public Health and Human Services, Child Support Enforcement Division, filed a special response to Petitioner’s motions dated October 1, 2009. Special Response to Petitioner’s Motions, dated October 1, 2009. Sharon Anderson on the same date filed a motion to quash Summons and to dismiss Petitioner’s motions. Motion to Quash Summons and to Dismiss Petitioner’s Motions, dated October 1, 2009. Diana filed her response to the Petitioner’s motion on October 19, 2009. Respondent’s Response to Petitioner’s Motion, dated October 19, 2009. The District Court in this case held a hearing on this matter on September 18, 2009. Order Setting

Hearing dated August 26, 2009.

The District Court in this case then issued an Order Re: Petitioner's Motion to Vacate Orders, Cease Collections and Return Seized Funds dated February 24, 2010. Order RE: Petitioner's Motion to Vacate Orders, Cease Collection and Return Seized Funds, dated February 24, 2010. The District Court concluded that the bulk of Robert's complaints were with the CSED, who had not been made a party to the present case. Id. at page 3. The Court also concluded that even if CSED were a party, the issues raised by Robert would be res judicata, because of the Montana Supreme Court's case decision in Cook v. State, CSED, 2009 MT 237N. Id. at page 3 and 4. Robert has filed an appeal from this District Court Order. Notice of Appeal, filed March 17, 2010.

**B. Statement of Facts**

The District Court in this case issued an Order Re: Petitioner's Motion to Vacate Orders, Cease Collections and Return Seized Funds on February 24, 2010. Order RE: Petitioner's Motion to vacate Orders, Cease Collections and Return Seized Funds, dated February 24, 2010. This occurred after a hearing was conducted before the Court on September 18, 2009. Id. at page 1. After that hearing, CSED, through Attorney Sharon Anderson filed a special response to Petitioner's motions and motion to quash Summons and to dismiss Petitioner's

motions on October 1, 2009. Special Response to Petitioner's Motions and Motion to Quash Summons and to Dismiss Petitioner's Motions, dated October 1, 2009. Diana filed her response to Robert's motions on October 19, 2009. Respondent's Response to Petitioner's Motion, dated October 19, 2009. Robert filed his reply brief to CSED special response to Petitioner's motion and reply brief to CSED motion to quash Summons and to dismiss Petitioner's motion's on October 14, 2009. Reply Brief to CSED's Motion to Quash Summons and to Dismiss Petitioner's Motions, dated October 14, 2009. Robert also filed a reply brief to Respondent's brief and motion for Attorney General and Lonnie Olson to pay for costs and personal service dated October 30, 2009. Reply Brief to Respondent's Response Brief, dated October 30, 2009.

### **SUMMARY OF THE ARGUMENT**

It is Robert's contention that the District Court in this case committed an error when the District Court did not make CSED a party to this action. Further, Robert contends that the District Court abused its discretion when the Court did not make any Findings of Fact or Conclusions of Law regarding the issues that were presented. Finally, Robert contends that the District Court in this case misapprehended the facts of this case and further misconstrued this Court's decision in Cook v. State, CSED, 2009 MT 237 N. and Cook v McClammy, 2009



MT 115.

Judge McKittrick concluded in his Order that the issues brought before the Court in this cause have already been decided and appealed. Order RE: Petitioner's Motion to Vacate Orders, Cease Collections and Return Seized Funds, dated February 24, 2010, page 3. Judge McKittrick further concluded that the bulk of the Petitioner's complaints were with CSED, who has not been made a party to the present case. Id. The Court also concluded that even if CSED were made a party, the issues would be res judicata because of the Montana Supreme Court decision in Cook v State, CSED, 2009 MT 237 N. Id. at page 3 and 4. Finally, the Court concluded that because the Petitioner had never requested back Child Support from the Respondent, it was improper to do so in reply briefings and denied the Petitioner request. Id. at page 4.

### **ARGUMENT**


**A. Substantial evidence exists to support the decision of the District Court denying Robert's motion to vacate any Orders, cease collections and return seized funds and supplemental motion, quash the Summons issued on August 24, 2009 and deny Robert's motion for Attorney General and Lonnie Olson to pay for costs of personal service.**

The District Court concluded in this case that the issues brought to the Court by Robert have already been decided and appealed in Cascade County Cause No. ADV-07-1651, Cook v. State, CSED, 2009 MT 237N. Order RE: Petitioner's Motion to Vacate Orders, Cease Collections and Return Seized Funds, dates February 24, 2010, page 3. The Court further correctly concluded that the "bulk" of Robert's complaints are with the CSED, who has not been made a party in the present case. Id. The Court went on to conclude that even if CSED were a party to the case, the issues would be res judicata, because of Montana Supreme Court's decision in Cook v. State. Id. at page 3 and 4. The District Courts conclusions in this case are correct and substantial evidence exists to support the District Court's decision.

### **CONCLUSION**

The District Court in this case did not commit reversible err and because of the Montana Supreme Court's decision in Cook v. State, CSED, 2009 MT 237N, the issues presented by Robert in this case have already been decided and appealed, making the issue in this appeal moot.

DATED this 25<sup>th</sup> day June, 2010.



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above RESPONDENT'S OPENING BRIEF was sent to the persons named below by mail, express service, hand-delivery, or telecopy:

<input checked="" type="checkbox"/>	U.S. Mail	Robert J. Cook
<input type="checkbox"/>	Express Service	Appearing Pro se
<input type="checkbox"/>	Hand-Delivery	P.O. Box 232
<input type="checkbox"/>	Fax	Dutton, Montana 59433

DATED this 25<sup>th</sup> day of June 2010.

  
\_\_\_\_\_  
JEFFREY S. FERGUSON  
Attorney at Law

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document meets with Rule 27,  
M.R.App.P. as follows:

Document line spacing ..... Double  
Proportionately spaced ..... Yes  
Typeface ..... Times New Roman  
Point size ..... 14  
Word count ..... 1585

  
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